

**C. THE REQUESTED STAY WOULD HARM CONSUMERS AND
THE PUBLIC INTEREST**

The FCC explicitly found that a stay of its price cap order "would be harmful to other parties and adverse to the public interest."³⁴ In particular, the Commission found that a stay would subject consumers to unreasonably high long-distance charges (resulting from access charge pass-throughs) that could not be remedied if the order is upheld on appeal.³⁵

Movants argue that they can avoid this harm by refunding their accumulated excess access charges to long-distance carriers after this Court's decision on the merits. According to movants, long-distance carriers will "pass access-charge cuts on to consumers following a refund to the same extent as they do now."³⁶ This remedy, however, is inadequate for several different reasons. As the Commission noted in declining to stay the *Price Cap Order*:

Even if there were a flow through of refunds by IXC's, it likely would take the form of prospective rate decreases for current and future customers and thus would not necessarily reach the same customers who paid the inflated prices preserved by the stay. More important, for the duration of the stay, IXC's and their customers would continue to pay charges for services that virtually everybody agrees have been higher than necessary, with all the economic distortions and disincentives such charges for vital services entail. In particular, we have found that the reductions in long-distance rates that will result from our orders will stimulate demand for long-distance service, which will benefit both the long-distance carriers

³⁴*FCC Stay Order*, at ¶ 34.

³⁵*Id.* at ¶¶ 36-39.

³⁶*LEC Motion*, at 20-21.

and the individual business and residential customers they serve. After-the-fact payments cannot undo the adverse effects on these interests of a stay.

FCC Stay Order, at ¶ 37.

D. THE "STAY" SHOULD BE DENIED

Movants' request for a mandatory injunction to change the status quo should be denied. Movants face no risk of irreparable injury during the pendency of this appeal. They have not demonstrated any likelihood of success on the merits. In addition, they offer nothing to contradict the Commission's finding that a stay would harm consumers and the public interest.

II. THE LECs' PROPOSAL TO SEVER MCI'S PETITION FROM THESE CONSOLIDATED CASES IS INEFFICIENT AND SHOULD BE DENIED.

The LECs also argue that the Court consider severing MCI's petition so that it may be held in abeyance while the other consolidated petitions for review of the *Price Cap Order* proceed.³⁷ This would be highly inefficient. The issues MCI plans to raise on appeal are necessarily intertwined with those that will be presented by the other consolidated petitions.

All of these consolidated petitions present the same ultimate question: whether the *Price Cap Order* constitutes reasoned decisionmaking. The LEC petitioners

³⁷*Id.* at 9 n.16.

plan to argue that the 6.5 percent X-Factor chosen by the Commission is too high.³⁸

MCI plans to argue that the Commission set the X-Factor too low. Similarly, the LECs will argue that the Commission ordered too great an adjustment to account for the fact that a higher X-Factor should have been in effect in years before 1996.³⁹ MCI plans to argue that the adjustment did not go far enough. In the end, however, this Court will have to decide whether the X-Factor chosen by the Commission is adequately supported by the record.

It simply makes no sense to require two separate panels of this Court to become familiar with an extensive and complicated record so that they can pass two separate judgments on the propriety of the FCC's actions with respect to precisely the same issues. Consolidation allows the Court to hear and resolve all challenges to the X-Factor computations at once. Doing so will serve the interests of efficiency and uniformity.

³⁸*See* Statement of Issues filed by Bell Atlantic Telephone Companies, Southwestern Bell Telephone Company, US West, Inc., USTA, and GTE (October 7, 1997) ("LEC Issues").

³⁹*Id.*

CONCLUSION

The LECs' motions to "stay" the *Price Cap Order* should be denied. The Court should also reject the LECs' suggestion that MCI's petition be severed from these consolidated proceedings.

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Dated: November 13, 1997.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November, 1997, I caused copies of the foregoing Opposition of the RBOC/GTE/SNET Coalition to MCI's Motion for a Stay to be served upon the parties on the attached service list by first-class mail.


Marilyn R. Leeland

FEDERAL COMMUNICATIONS COMMISSION
Implementation of the Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act of 1996
CC Docket No. 96-128, Second Report and Order

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